

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 06-0268**  
**Sales and Use Tax**  
**For The Tax Period 2005**

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**ISSUE**

**I. Sales and Use Tax - Imposition**

**Authority:** IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC 6-2.5-2(c)(1); IC § 6-6-6.5-8(d); 45 IAC 2.2-5-15; 45 IAC 2.2-4-27(d); *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The taxpayer protests the assessment of use tax on an airplane.

**STATEMENT OF FACTS**

The taxpayer is a corporation which bought an airplane in 2005. The Indiana Department of Revenue, hereinafter referred to as the "Department," assessed Indiana use tax, interest, and penalty on the airplane. The Taxpayer protested the assessment of use tax. A hearing was held and this Letter of Findings results.

**1. Sales and Use Tax -Imposition**

**Discussion**

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b). Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC § 6-2.5-2(c)(1).

IC § 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

The Taxpayer bases its claim for exemption on the following provisions of IC § 6-2.5-5-8 which states as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property. . . .

The law concerning the exemption for rental to others is further explained at 45 IAC 2.2-5-15 as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

- (3) The property must be resold, rented or leased in the same form in which it was purchased.

The Taxpayer states that it was in the business of renting the aircraft and therefore qualifies for the rental exemption on the airplane. This exemption requires compliance with three elements. One of these requirements is that the Taxpayer must be engaged in the reselling, renting, or leasing of such property in its regular course of business.

In support of the Taxpayer's contention that it qualifies for the rental exemption, the Taxpayer submitted its insurance policy. That policy insured the airplane for use in "Pleasure and Business," which is defined on page 7 as follows:

"PLEASURE AND BUSINESS" means used in the business of the Insured, including personal and pleasure uses, **but excluding any operation for hire or reward.** Cost reimbursement shall be included within the definition of Pleasure and Business provided that such cost reimbursement is limited to:

- (1) Fuel, oil, lubricants, and other additives
- (2) Expenses of the crew, including food, lodging, and ground transportation, but excluding salary or wages
- (3) Hangar and tie-down costs away from the aircraft's base of operation
- (4) Insurance obtained for the specific flight
- (5) Landing fees and similar assessments
- (6) Customs, foreign permit, and similar fees directly related to the flight
- (7) In flight food and beverages
- (8) An additional charge equal to 100[percent] of the expenses listed in subparagraph (1) above (Emphasis added)

The insurance policy which the Taxpayer obtained to cover the airplane specifically excluded airplanes purchased for the business of rental to others from policy coverage. Since the Taxpayer insured the airplane with a policy that excluded airplane rental operations from coverage, there could not have been a true airplane rental contract in effect.

The rental rates charged for this airplane were not rationally related to the total cost of the airplane. The rate of \$250 per hour was significantly below the actual business cost of operating the airplane. Further, the Taxpayer did not collect and remit sales tax on the purported rentals of the airplane.

The Taxpayer rented the airplane significantly below cost. The Taxpayer did not collect and remit the sales tax on the rentals of the airplane. The Taxpayer's insurance policy specifically excluded the airplane from coverage if it was used as a rental airplane. The Taxpayer's use of the airplane did not constitute the rental of an airplane in the normal course of Taxpayer's

business as contemplated by the sales and use tax statutes. The Taxpayer's use of the airplane did not qualify for the rental exemption from the imposition of the use tax.

### **Finding**

The taxpayer's protest to the assessment of use tax on its airplane is denied.

KMA/BK/DK – February 6, 2007